

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 18, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

KEVIN TESKY and JENNIFER
TESKY,

Plaintiffs,

v.

ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY,

Defendant.

No. 2:23-CV-00306-MKD

**STIPULATED PROTECTIVE
ORDER**

With the Joint Status Report, ECF No. 15, the parties seek a Stipulated Protective Order. The Court has reviewed the record, has heard from counsel, and is fully informed. The Court finds good cause to grant the proposed stipulated protective order.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Protective Order ECF No. 15-1, is GRANTED.

Stipulated Protective Order

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with WDWA LCR 26(c).¹ It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

Pursuant to Fed. R. Civ. P. 16(b)(4), the dates set forth in this Order may be amended **only** by Order of the Court and upon a showing of good cause. Pursuant to Fed. R. Civ. P. 29, the parties may stipulate to other procedures governing or limiting discovery, except the dates set forth in this Order.

¹ Throughout their stipulation the parties cite to the Western District of Washington's Local Rules. This Court's Local Rules do not provide procedures for the handling of protected material. The references to the WDWA LCR control as set forth in this Order, otherwise the EDWA's LCivR control.

1 **2. “CONFIDENTIAL” MATERIAL**

2 Confidential” Material shall include the parties’ confidential and proprietary
3 documents, including Allstate’s Claims Operation Manual and Allstate’s Property
4 Claims Handling Manual.

5 **3. SCOPE**

6 The protections conferred by this agreement cover not only **Confidential**
7 material (as defined above), but also (1) any information copied or extracted from
8 **Confidential** material; (2) all copies, excerpts, summaries, or compilations of
9 **Confidential** material; and (3) any testimony, conversations, or presentations by
10 parties or their counsel that might reveal **Confidential** material.

11 However, the protections conferred by this agreement do not cover
12 information that is in the public domain or becomes part of the public domain
13 through trial or otherwise.

14 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 4.1. Basic Principles. A receiving party may use **Confidential** material
16 that is disclosed or produced by another party or by a non-party in connection with
17 this case only for prosecuting, defending, or attempting to settle this litigation.
18 **Confidential** material may be disclosed only to the categories of persons and
19 under the conditions described in this agreement. **Confidential** material must be
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1 stored and maintained by a receiving party at a location and in a secure manner that
2 ensures that access is limited to the persons authorized under this agreement.

3 4.2. Disclosure of “**Confidential**” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving
5 party may disclose any **Confidential** material only to:

6 a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 b) the officers, directors, and employees (including in house
10 counsel) of the receiving party to whom disclosure is reasonably necessary
11 for this litigation, unless the parties agree that a particular document or
12 material produced is for Attorney’s Eyes Only and is so designated;

13 c) experts and consultants to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (**Exhibit A**);

16 d) the court, court personnel, and court reporters and their staff;

17 e) copy or imaging services retained by counsel to assist in the
18 duplication of **Confidential** material, provided that counsel for the party
19 retaining the copy or imaging service instructs the service not to disclose any
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1 confidential material to third parties and to immediately return all originals
2 and copies of any **Confidential** material;

3 f) during their depositions, witnesses in the action to whom
4 disclosure is reasonably necessary and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (**Exhibit A**), unless
6 otherwise agreed by the designating party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal
8 confidential material must be separately bound by the court reporter and may
9 not be disclosed to anyone except as permitted under this agreement;

10 g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 4.3. Filing **Confidential** Material. Before filing **Confidential** material or
13 discussing or referencing such material in court filings, the filing party shall confer
14 with the designating party, in accordance with WDWA LCR 5(g)(3)(A), to
15 determine whether the designating party will remove the confidential designation,
16 whether the document can be redacted, or whether a motion to seal or stipulation
17 and proposed order is warranted. During the meet and confer process, the
18 designating party must identify the basis for sealing the specific **Confidential**
19 information at issue, and the filing party shall include this basis in its motion to
20 seal, along with any objection to sealing the information at issue. WDWA LCR

1 5(g) sets forth the procedures that must be followed and the standards that will be
2 applied when a party seeks permission from the court to file material under seal.²

3 A party who seeks to maintain the confidentiality of its information must satisfy
4 the requirements of WDWA LCR 5(g)(3)(B), even if it is not the party filing the
5 motion to seal. Failure to satisfy this requirement will result in the motion to seal
6 being denied, in accordance with the strong presumption of public access to the
7 Court's files.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1. Exercise of Restraint and Care in Designating Material for Protection.

10 Each party or non-party that designates information or items for protection under
11 this agreement must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The designating party must designate for
13 protection only those parts of material, documents, items, or oral or written

14 _____
15 ² The Court, concurrently with this Protective Order, files a Jury Trial Scheduling
16 Order setting forth procedures for filing sealed documents. In that Order, the Court
17 directs that no separate motion to seal a document is required, and that any
18 objections to a document being sealed should be filed no later than five days.

19 Either any party seeking to seal documents, the parties shall confer and may abide
20 by either the procedure set forth here or in the Court's Jury Trial Scheduling Order.

1 communications that qualify, so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber or delay the case development process or
7 to impose unnecessary expenses and burdens on other parties) expose the
8 designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it
10 designated for protection do not qualify for protection, the designating party must
11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 5.2. Manner and Timing of Designations. Except as otherwise provided in
13 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as
14 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
15 protection under this agreement must be clearly so designated before or when the
16 material is disclosed or produced.

17 a) Information in documentary form: (e.g., paper or electronic
18 documents and deposition exhibits, but excluding transcripts of depositions
19 or other pretrial or trial proceedings), the designating party must affix the
20 word "CONFIDENTIAL" to each page that contains **Confidential** material.

1 If only a portion or portions of the material on a page qualifies for
2 protection, the producing party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

4 b) Testimony given in deposition or in other pretrial proceedings:
5 the parties and any participating non-parties must identify on the record,
6 during the deposition or other pretrial proceeding, all protected testimony,
7 without prejudice to their right to so designate other testimony after
8 reviewing the transcript. Any party or non-party may, within fifteen days
9 after receiving the transcript of the deposition or other pretrial proceeding,
10 designate portions of the transcript, or exhibits thereto, as **Confidential**. If a
11 party or non-party desires to protect **Confidential** information at trial, the
12 issue should be addressed during the pre-trial conference.

13 c) Other tangible items: the producing party must affix in a
14 prominent place on the exterior of the container or containers in which the
15 information or item is stored the word "CONFIDENTIAL." If only a portion
16 or portions of the information or item warrant protection, the producing
17 party, to the extent practicable, shall identify the protected portion(s).

18 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the designating party's right to secure protection under this agreement for such

1 material. Upon timely correction of a designation, the receiving party must make
2 reasonable efforts to ensure that the material is treated in accordance with the
3 provisions of this agreement.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1. Timing of Challenges. Any party or non-party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a
7 designating party's confidentiality designation is necessary to avoid foreseeable,
8 substantial unfairness, unnecessary economic burdens, or a significant disruption
9 or delay of the litigation, a party does not waive its right to challenge a
10 confidentiality designation by electing not to mount a challenge promptly after the
11 original designation is disclosed.

12 6.2. Meet and Confer. The parties must make every attempt to resolve any
13 dispute regarding confidential designations without court involvement. Any motion
14 regarding confidential designations or for a protective order must include a
15 certification, in the motion or in a declaration or affidavit, that the movant has
16 engaged in a good faith meet and confer conference with other affected parties in
17 an effort to resolve the dispute without court action. The certification must list the
18 date, manner, and participants to the conference. A good faith effort to confer
19 requires a face-to-face meeting or a telephone conference.
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1 6.3. Judicial Intervention. If the parties cannot resolve a challenge without
2 court intervention, the designating party may file and serve a motion to retain
3 confidentiality under WDWA LCR 7 (and in compliance with WDWA LCR 5(g),
4 if applicable). The burden of persuasion in any such motion shall be on the
5 designating party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the challenging party to sanctions. All parties shall continue to maintain
8 the material in question as confidential until the court rules on the challenge.

9 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
10 **PRODUCED IN OTHER LITIGATION**

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must:

14 a) promptly notify the designating party in writing and include a copy of
15 the subpoena or court order;

16 b) promptly notify in writing the party who caused the subpoena or order
17 to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this agreement. Such notification shall include a
19 copy of this agreement; and

20 c) cooperate with respect to all reasonable procedures sought to be
pursued by the designating party whose Confidential material may be affected.

1 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED**
2 **MATERIAL**

3 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
4 **Confidential** material to any person or in any circumstance not authorized under
5 this agreement, the receiving party must immediately (a) notify in writing the
6 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
7 all unauthorized copies of the protected material, (c) inform the person or persons
8 to whom unauthorized disclosures were made of all the terms of this agreement,
9 and (d) request that such person or persons execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
12 **OTHERWISE PROTECTED MATERIAL**

13 When a producing party gives notice to receiving parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the receiving parties are those set forth in Fed. R.
16 Civ. P. 26(b)(5)(B). This provision is not intended to modify whatever procedure
17 may be established in an e-discovery order or agreement that provides for
18 production without prior privilege review. The parties agree to the entry of a non-
19 waiver order under Fed. R. Evid. 502(d) as set forth herein.
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1 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals,
3 each receiving party must return all **Confidential** material to the producing party,
4 including all copies, extracts and summaries thereof. Alternatively, the parties may
5 agree upon appropriate methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival
7 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
8 correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain
10 **Confidential** material.

11 The confidentiality obligations imposed by this agreement shall remain in
12 effect until a designating party agrees otherwise in writing or a court orders
13 otherwise.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and provide copies to the parties.

16 DATED December 18, 2023.

17 s/Mary K. Dimke
18 MARY K. DIMKE
19 UNITED STATES DISTRICT JUDGE
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